

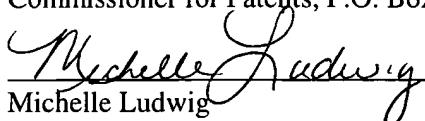


PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE UNDER 37 C.F.R. §1.10

I hereby certify that the documents enclosed herein are being deposited with the United States Postal Service on this 29th day of July, 2004 in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number EV114072985US addressed to: MAIL STOP PETITION, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.


Michelle Ludwig

In re application of: Taylor et al.)
Serial No.: 09/386,605) Examiner: Georgia L. Helmer
Filed: August 31, 1999) Group Art Unit: 1638
For: Novel Transgene Assay Using Stable) Conf. No. 1594
Agrobacterium Rhizogenes Transformation)

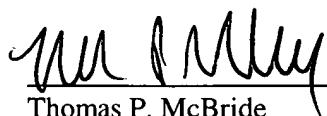
MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

TRANSMITTAL LETTER

Transmitted herewith are the following documents in the above-identified application.

- Petition to Withdraw Notice of Abandonment or, in the Alternative, to Revive an Unintentionally Abandoned Application
- Fee Transmittal for Year 2004
- If an extension or an additional extension of time is required, but is not enclosed, please consider this a conditional petition therefor and charge Deposit Account 13-4125 accordingly.
- Please debit \$1,460.00 from Deposit Account 13-4125 for the fee required with this filing.
- Please charge any deficiencies or credit any overpayment to Deposit Account 13-4125. A duplicate copy of this sheet is attached.

Respectfully submitted,


Thomas P. McBride

Reg. No. 32,706
800 North Lindbergh Boulevard, Mail Zone E2NA
St. Louis, Missouri 63167
(314) 694-5802 (telephone)
(314) 694-5311 (facsimile)



Express Mail #EV114072985US

PTO/SB/17 (10-03)

Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 1,460.00)

Complete if Known

Application Number	09/386,605
Filing Date	8/31/1999
First Named Inventor	Christopher G. Taylor
Examiner Name	G. Helmer
Art Unit	1638
Attorney Docket No.	38-21(15757)

METHOD OF PAYMENT (check all that apply)

Check Credit card Money Order Other None

Deposit Account:

Deposit Account Number
13-4125

Deposit Account Name
Monsanto Company

The Director is authorized to: (check all that apply)

Charge fee(s) indicated below Credit any overpayments

Charge any additional fee(s) or any underpayment of fee(s)

Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION (continued)

3. ADDITIONAL FEES
Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	1,330.00
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	130.00
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 1,460.00)

**or number previously paid, if greater; For Reissues, see above

SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	Thomas P. McBride	Registration No. (Attorney/Agent)	32,706	Telephone	314-694-5802
Signature		Date	7/29/04		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



07-30-04

DAG
IFWDIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Taylor et al.

Serial number:

09/386,605

Filing Date:

08/31/99

Docket Number

38-21 (15757)

Group Art Unit:

1638

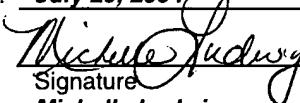
Examiner:

Helmer, G.

Title:

**Novel Transgene Assay Using Stable
Agrobacterium Rhizogenes
Transformation**CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail #EV114072985US, in an envelope addressed to: MAIL STOP PETITION, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia, 22313-1450 on July 29, 2004.

DATE: July 29, 2004
Signature
Michelle Ludwig
Printed NamePETITION TO WITHDRAW NOTICE OF ABANDONMENT OR, IN THE ALTERNATIVE, TO
REVIVE AN UNINTENTIONALLY ABANDONED APPLICATION

MAIL STOP PETITION
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

This petition is to clarify the status of the above-identified patent application in the PTO records. It is requested that the notice of abandonment of the application dated September 23, 2003 be withdrawn as being improperly issued. In the alternative, if the PTO determines that the Notice of Abandonment was proper, then Applicants request that this application be revived pursuant to 37 CFR 1.137(b) as being unintentionally abandoned.

Petition
09/386,605

PAGE 1 of 3
Docket Number 38-21 (15757)

09386605
08/03/2004 WRBDELR1 00000118 134125
1330.00 DA
130.00 DA
01 FC:1453
02 FC:1460

Background Facts

On August 27, 2002, the PTO issued an Office Action that on the Office Action Summary Sheet indicated that the Office Action was non-final and Applicants docketed as such (Exhibit 1). Upon reviewing the Office Action prior to filing a response, it was noted that the Examiner had indicated that the Office Action was final but did not include the usual language regarding final office actions at the end of the Office Action.

Applicants' attorney called the Examiner on November 25, 2002 to inquire about this discrepancy and brought it to the Examiner's attention. At the time, no action was taken by the Examiner. In order to preserve its rights, Applicants' attorney filed a Notice of Appeal on November 26, 2002 (Exhibit 2).

On December 3, 2002, the Examiner issued a supplemental Office Action vacating the Office Action of August 27, 2002 (Exhibit 3, see page 2 of Office Action, paragraph 1). Applicant then re-docketed this Office Action for response and requested a refund of the Appeal Fee from its November 26, 2002 appeal (Exhibit 4).

On May 2, 2003, Applicant again filed a Notice of Appeal in connection with this application including the requisite 2 month extension of time (Exhibit 5).

On September 23, 2003, Applicants received a Notice of Abandonment from the Examiner, referring to the Applicants' Notice of Appeal received by the USPTO on December 3, 2002 and corresponding to the Notice of Appeal filed on November 26, 2002. (Exhibit 6)

On November 3, 2003, Applicants attorney (the undersigned) called Examiner Amy Nelson to discuss this matter and inquired as to the proper course of action on this matter, but having not heard back from the Patent Office on the RCE and amendment, Applicants decided to file this petition.

Because Applicants' Notice of Appeal appealed the Office Action of August 27, 2002 and that Office Action was subsequently vacated, it is Applicants' position that this Notice of Abandonment is improper and should be withdrawn. When Applicants attempted to preserve its rights by filing a Notice of Appeal on November 26, 2002, it was not aware that the PTO was going to vacate the August 27, 2002 Office Action and submit a further Office Action re-setting the dates.

Continuing in its prosecution of this application, Applicants filed a Request for Continued Examination with an Amendment responding to the outstanding Office Action on December 2, 2003 with the requisite 5 month extension of time to render it timely filed (Exhibit 7).

Summary

In view of the facts presented above, Applicant requests that the status of this application be clarified by withdrawal of the Notice of Abandonment in the file or a reference in the file that the Notice of Abandonment refers to a Notice of Appeal that was rendered moot by subsequent PTO actions. Applicant requests that this application be reviewed by the Examining Group in due course pursuant to the RCE and amendment filed by the Applicants.

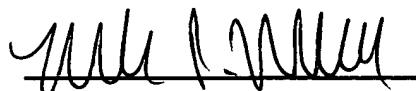
In the alternative, if the PTO determines that this application has become abandoned, Applicant hereby states that any such abandonment was unintentional and respectfully petitions to revive this application. The necessary reply to the outstanding Office Action has already been filed. The petition fee is authorized to be withdrawn from Applicants deposit account per the instructions below.

The entire delay in filing the required reply until the filing of this petition was unintentional. It is not believed that a terminal disclaimer is required under 37 CFR 1.137(d)

In the event that any additional fees are necessary in connection with this petition, the Patent Office is hereby authorized to debit Deposit Account 13-4125 for any such fee required and to consider this a conditional petition therefore.

In view of the foregoing, it is submitted that this petition sets forth sufficient facts to withdraw the Notice of Abandonment in this case and to continue prosecution on the merits of the RCE with amendment. In the alternative, applicants request that this application be revived as being unintentionally abandoned.

Respectfully Submitted,



Thomas P. McBride
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St. Louis, MO 63167
Voice: (314) 694-5802
Fax: (314) 694-5311



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/386,605	08/31/1999	CHRISTOPHER G. TAYLOR	(38-21-(15757) A/US)	1594
27161	7590	08/27/2002		
MONSANTO COMPANY 800 N. LINDBERGH BLVD. ATTENTION: G.P. WUELLNER, IP PARALEGAL, (E2NA) ST. LOUIS, MO 63167			EXAMINER	HELMER, GEORGIA L
			ART UNIT	PAPER NUMBER
			1638	

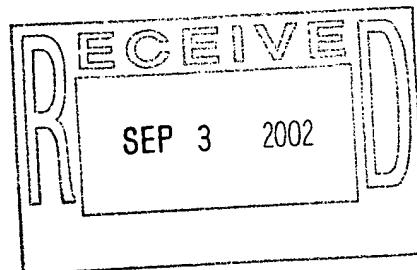
DATE MAILED: 08/27/2002

(NON-FINAL) 13

Please find below and/or attached an Office communication concerning this application or proceeding.

(TPM)

POSTED
9/20/02



Office Action Summary	Application No.	Applicant(s)
	09/386,605	TAYLOR ET AL.
	Examiner	Art Unit
	Georgia L. Helmer	1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11 June 2002.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 12-26 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) Interview Summary (PTO-413) Paper No(s). _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

OFFICE ACTION

Status of the Claims

1. The Office acknowledges receipt of Applicants Response; dated 11 June 2002, paper number 12.
2. Applicant has amended claims 1, 3, 8 and 11. Claims 1-28 are pending. Claims 1-11 are examined in the instant action.

This action is made FINAL.

3. All rejections not addressed below have been withdrawn.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-11 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for soybean hypocotyls and potato branches, does not reasonably provide enablement for any explant of any plant. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Applicant's claims are broadly drawn to any explant of any plant.

Re any explant:

Art Unit: 1638

Applicant teaches soybean hypocotyls and potato branches. Hypocotyls and stems are not representative of all explants. Stems and hypocotyls are explants which have undergone differentiation and possess special features such as hormone gradients (Raven et al, Biology of Plants (1992), Worth Publishers, New York, NY 10003, pages 548). These explants (stem & hypocotyls) "know which end is up". Not all explants have these features. It is unpredictable that other explants not having these features, would be capable of functioning in the same way as stems and hypocotyls in the claimed invention. Neither the prior art nor Applicant's disclosure shows that explants other than stems and hypocotyls are capable of functioning as desired in the claimed invention. Accordingly, it is unpredictable that explants other than stems and hypocotyls can be used to practice the claimed invention as commensurate in scope with the claims.

Re any plant:

Applicant claims any plant. Applicant teaches soybean and potato, which are dicot plants. Dicot plants are not representative of all plants. Especially they are not representative of monocot plants. The properties of stems of dicot plants differ from those of monocot plants (Raven et al, Biology of Plants (1992), Worth Publishers, New York, NY 10003, pages 382, Table 18, and 494-5, Figures 23-8, 23-9 and 23-10). Dicots show secondary growth, characterized by the presence of secondary meristematic tissue. Dicot stem cells have the capacity to dedifferentiate and become meristematic, whereas monocot stem cells do not have this capacity. It is unpredictable that plants other than dicots would be capable of functioning in the same way as the dicots in the

Art Unit: 1638

claimed invention. Neither the prior art nor Applicant's disclosure shows that plants other than dicots are capable of functioning as desired in the claimed invention. Accordingly, it is unpredictable that plants other than dicots can be used to practice the claimed invention as commensurate in scope with the claims.

In view of the breadth of the claims (any explant and any plant) and the lack of guidance in the specification, undue experimentation would be required to enable the invention as commensurate in scope with the claims. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Remarks

5. No Claim is allowed.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Georgia L. Helmer whose telephone number is 703-308-7023. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on 703-306-3218. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Georgia L. Helmer PhD
Patent Examiner
Art Unit 1638
August 23, 2002

Phuong Bui
PHUONG T. BUI 8/26/02
PRIMARY EXAMINER

Notice of References Cited

Application/Control No.

09/386,605

Applicant(s)/Patent Under

Reexamination

TAYLOR ET AL.

Examiner

Georgia L. Helmer

Art Unit

1638

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-			
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	(Raven et al, Biology of Plants (1992), Worth Publishers, New York, NY 10003, pages 382, Table 18, and 494-5, Figures 23-8, 23-9 and 23-10)
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICECERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited in the United States Postal Service as first class mail in an envelope addressed to Assistant Commissioner for Patents, Washington, D.C. 20231 on this 26 day of November, 2002.


Thomas P. McBride

In re application of:)
Taylor et al.)
Serial No.: 09/386,605) Examiner: Georgia L. Helmer
Filed: August 31, 1999) Group Art Unit: 1638
For: NOVEL TRANSGENE ASSAY USING) Conf. No. 1594
STABLE AGROBACTERIUM RHIZOGENES)
TRANSFORMATION)

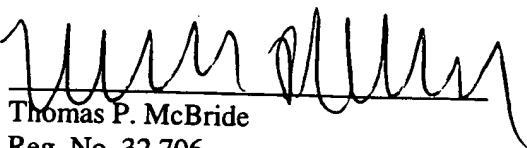
Assistant Commissioner for Patents
Washington, D.C. 20231

TRANSMITTAL LETTER

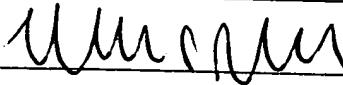
Transmitted herewith are the following documents in the above-identified application.

- Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences
- Fee Transmittal for Year 2002;
- If an extension or an additional extension of time is required, but is not enclosed, please consider this a conditional petition therefor and charge Deposit Account 13-4125 accordingly.
- Please debit \$320.00 from Deposit Account 13-4125 for the fee required with this filing.
- Please charge any deficiencies or credit any overpayment to Deposit Account 13-4125. A duplicate copy of this sheet is attached.

Respectfully submitted,


Thomas P. McBride
Reg. No. 32,706
Monsanto Company
700 Chesterfield Parkway North, Mail Zone BB1L
Chesterfield, Missouri 63198
(636) 737-7685
(636) 737-6047 (fax)

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES		Docket Number (Optional) 38-21(15757)						
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Assistant Commissioner for Patents, Washington D.C. 20231" on <u>26 Nov 07</u>.</p> <p>Signature </p> <p>Typed or printed name Thomas P. McBride</p>		<p>In re Application of Taylor et al.</p> <table border="1"> <tr> <td>Application Number 09/386,605</td> <td>Filed 08/31/1999</td> </tr> <tr> <td colspan="2">For Novel Transgene Assay Using Stable Agrobacterium Rhizogenes Transformation</td> </tr> <tr> <td>Group Art Unit 1638</td> <td>Examiner Georgia L. Helmer</td> </tr> </table>	Application Number 09/386,605	Filed 08/31/1999	For Novel Transgene Assay Using Stable Agrobacterium Rhizogenes Transformation		Group Art Unit 1638	Examiner Georgia L. Helmer
Application Number 09/386,605	Filed 08/31/1999							
For Novel Transgene Assay Using Stable Agrobacterium Rhizogenes Transformation								
Group Art Unit 1638	Examiner Georgia L. Helmer							

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 1.17(b)) \$ 320.00

- Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: \$ _____.
- A check in the amount of the fee is enclosed.
- Payment by credit card. Form PTO-2038 is attached.
- The Commissioner has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.
- The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 13-4125. I have enclosed a duplicate copy of this sheet.
- A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

- applicant/inventor.
- assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- attorney or agent of record.
- attorney or agent acting under 37 CFR 1.34(a).
Registration number if acting under 37 CFR 1.34(a). _____



Signature

Thomas P. McBride
Typed or printed name

26 Nov 07
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- *Total of one forms are submitted.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FEE TRANSMITTAL for FY 2002

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT (\$ 320.00)

Complete if Known

Application Number	09/386,605
Filing Date	08/31/1999
First Named Inventor	Christopher G. Taylor
Examiner Name	Georgia L. Helmer
Group Art Unit	1638
Attorney Docket No.	38-21(15757)

METHOD OF PAYMENT

1. The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit Account Number **13-4125**
Deposit Account Name **Monsanto Company**

Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17
 Applicant claims small entity status. See 37 CFR 1.27

2. Payment Enclosed:

Check Credit card Money Order Other

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Small Entity

Fee Code (\$) Fee Code (\$)

101	740	201	370	Utility filing fee	<input type="text"/>
106	330	206	165	Design filing fee	<input type="text"/>
107	510	207	255	Plant filing fee	<input type="text"/>
108	740	208	370	Reissue filing fee	<input type="text"/>
114	160	214	80	Provisional filing fee	<input type="text"/>

Fee Paid

SUBTOTAL (1) (\$ 0-

2. EXTRA CLAIM FEES

Extra Claims Fee from below Fee Paid

Total Claims	<input type="text"/>	-20** = <input type="text"/>	X 18.00 = <input type="text"/>	<input type="text"/>
Independent Claims	<input type="text"/>	- 3** = <input type="text"/>	X 84.00 = <input type="text"/>	<input type="text"/>
Multiple Dependent	<input type="text"/>			<input type="text"/>

Large Entity Small Entity

Fee Code (\$) Fee Code (\$)

103	18	203	9	Claims in excess of 20	<input type="text"/>
102	84	202	42	Independent claims in excess of 3	<input type="text"/>
104	280	204	140	Multiple dependent claim, if not paid	<input type="text"/>
109	84	209	42	** Reissue independent claims over original patent	<input type="text"/>
110	18	210	9	** Reissue claims in excess of 20 and over original patent	<input type="text"/>

SUBTOTAL (2) (\$ 0-

**or number previously paid, if greater; For Reissues, see above

3. ADDITIONAL FEES

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
105	130	205 65 Surcharge - late filing fee or oath	<input type="text"/>
127	50	227 25 Surcharge - late provisional filing fee or cover sheet	<input type="text"/>
139	130	139 130 Non-English specification	<input type="text"/>
147	2,520	147 2,520 For filing a request for ex parte reexamination	<input type="text"/>
112	920*	112 920* Requesting publication of SIR prior to Examiner action	<input type="text"/>
113	1,840*	113 1,840* Requesting publication of SIR after Examiner action	<input type="text"/>
115	110	215 55 Extension for reply within first month	<input type="text"/>
116	400	216 200 Extension for reply within second month	<input type="text"/>
117	920	217 460 Extension for reply within third month	<input type="text"/>
118	1,440	218 720 Extension for reply within fourth month	<input type="text"/>
128	1,960	228 980 Extension for reply within fifth month	<input type="text"/>
119	320	219 160 Notice of Appeal	320.00
120	320	220 160 Filing a brief in support of an appeal	<input type="text"/>
121	280	221 140 Request for oral hearing	<input type="text"/>
138	1,510	138 1,510 Petition to institute a public use proceeding	<input type="text"/>
140	110	240 55 Petition to revive - unavoidable	<input type="text"/>
141	1,280	241 640 Petition to revive - unintentional	<input type="text"/>
142	1,280	242 640 Utility issue fee (or reissue)	<input type="text"/>
143	460	243 230 Design issue fee	<input type="text"/>
144	620	244 310 Plant issue fee	<input type="text"/>
122	130	122 130 Petitions to the Commissioner	<input type="text"/>
123	50	123 50 Processing fee under 37 CFR 1.17(q)	<input type="text"/>
126	180	126 180 Submission of Information Disclosure Stmt	<input type="text"/>
581	40	581 40 Recording each patent assignment per property (times number of properties)	<input type="text"/>
146	740	246 370 Filing a submission after final rejection (37 CFR § 1.129(a))	<input type="text"/>
149	740	249 370 For each additional invention to be examined (37 CFR § 1.129(b))	<input type="text"/>
179	740	279 370 Request for Continued Examination (RCE)	<input type="text"/>
169	900	169 900 Request for expedited examination of a design application	<input type="text"/>

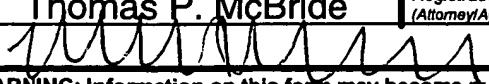
Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 320.00)

SUBMITTED BY

Complete (if applicable)

Name (Print/Type)	Thomas P. McBride	Registration No. (Attorney/Agent)	32,706	Telephone	(636) 737-7685
Signature				Date	26 Nov 02

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/386,605	08/31/1999	CHRISTOPHER G. TAYLOR	38-21-(15757	1594

27161 7590 12/03/2002

MONSANTO COMPANY
800 N. LINDBERGH BLVD.
ATTENTION: G.P. WUELLNER, IP PARALEGAL, (E2NA)
ST. LOUIS, MO 63167

[REDACTED] EXAMINER

HELMER, GEORGIA L

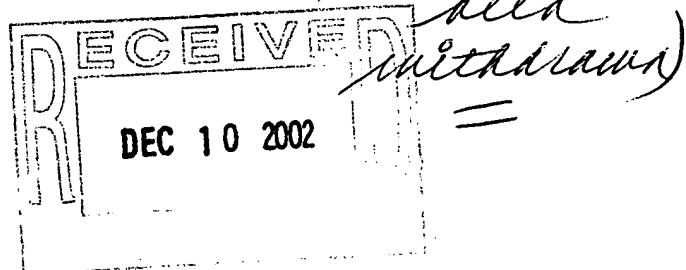
[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1638

DATE MAILED: 12/03/2002

(FINAL
REJECTION)

Please find below and/or attached an Office communication concerning this application or proceeding.



(TPM)
POSTED
12/10/2002 10 AM



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/386,605	08/31/1999	CHRISTOPHER G. TAYLOR	38-21-(15757	1594

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ATTENTION: G.P. WUELLNER, IP PARALEGAL, (E2NA)
ST. LOUIS, MO 63167

[REDACTED] EXAMINER

HELMER, GEORGIA L

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1638

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

*Office Action dated 8/27/02 has been
withdrawn*

Office Action Summary	Application No.	Applicant(s)
	09/386,605	TAYLOR ET AL.
	Examiner Georgia L. Helmer	Art Unit 1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 11 June 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

4) Claim(s) 1-26 is/are pending in the application.

4a) Of the above claim(s) 12-26 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-11 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Disposition of Claims

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) Interview Summary (PTO-413) Paper No(s). 15.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

Interview Summary	Application No. 09/386,605	Applicant(s) TAYLOR ET AL.
	Examiner Georgia L. Helmer	Art Unit 1638

All participants (applicant, applicant's representative, PTO personnel):

(1) Georgia L. Helmer. (3) Phuong Bui.

(2) Tom McBride. (4) _____.

Date of Interview: 25 November 2002.

Type: a) Telephonic b) Video Conference
c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.
If Yes, brief description: _____.

Claim(s) discussed: none.

Identification of prior art discussed: none.

Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i) It is not necessary for applicant to provide a separate record of the substance of the interview(if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an attachment to a signed Office action.

Examiner's signature, if required

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant Tom McBride queried the Examiner on November 25, 2002 about a discrepancy, bringing it to the Examiner's attention. An inadvertent error by the Office was made in the Office Action Summary (PTO-326) of the August 27, 2002 action-the Status of the action was checked as being non-final. This is incorrect. Applicant requested that the Office Action be maintained as a non-final. The August 27, 2002 Rejection raised no new grounds of rejection and is a proper final rejection.. The August 27, 2002 action is being vacated and a supplemental action is being issued. This action is a Final action. The Office regrets any inconvenience caused to Applicant..

OFFICE ACTION

1. This is a supplemental action, vacating the Office action of August 27, 2002.

This action is a Final action. The action August 27, 2002 is a Final action. However, an inadvertent error was made in the Office Action Summary (PTO-326) of the August 27, 2002 action—the Status of the action was checked as being non-final. This is incorrect. The instant action corrects this mistake. The August 27, 2002 Rejection raised no new grounds of rejection and is a proper final rejection.

Applicant Tom McBride queried the Examiner on November 25, 2002 about this discrepancy, bringing it to the Examiner's attention. The Office regrets any inconvenience caused to Applicant.

Status of the Claims

2. The Office acknowledges receipt of Applicants Response; dated 11 June 2002, paper number 12.
3. Applicant has amended claims 1, 3, 8 and 11. Claims 1-28 are pending. Claims 1-11 are examined in the instant action.

This action is made FINAL.

4. All rejections not addressed below have been withdrawn.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Art Unit: 1638

6. Claims 1-11 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for soybean hypocotyls and potato branches, does not reasonably provide enablement for any explant of any plant. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Applicant's claims are broadly drawn to any explant of any plant.

Re any explant:

Applicant teaches soybean hypocotyls and potato branches. Hypocotyls and stems are not representative of all explants. Stems and hypocotyls are explants which have undergone differentiation and possess special features such as hormone gradients (Raven et al, Biology of Plants (1992), Worth Publishers, New York, NY 10003, pages 548). These explants (stem & hypocotyls) "know which end is up". Not all explants have these features. It is unpredictable that other explants not having these features, would be capable of functioning in the same way as stems and hypocotyls in the claimed invention. Neither the prior art nor Applicant's disclosure shows that explants other than stems and hypocotyls are capable of functioning as desired in the claimed invention. Accordingly, it is unpredictable that explants other than stems and hypocotyls can be used to practice the claimed invention as commensurate in scope with the claims.

Re any plant:

Applicant claims any plant. Applicant teaches soybean and potato, which are dicot plants. Dicot plants are not representative of all plants. Especially they are not representative of monocot plants. The properties of stems of dicot plants differ from those of monocot plants (Raven et al, Biology of Plants (1992), Worth Publishers, New York, NY 10003, pages 382, Table 18, and 494-5, Figures 23-8, 23-9 and 23-10). Dicots show secondary growth, characterized by the presence of secondary meristematic tissue. Dicot stem cells have the capacity to dedifferentiate and become meristematic, whereas monocot stem cells do not have this capacity. It is unpredictable that plants other than dicots would be capable of functioning in the same way as the dicots in the claimed invention. Neither the prior art nor Applicant's disclosure shows that plants other than dicots are capable of functioning as desired in the claimed invention. Accordingly, it is unpredictable that plants other than dicots can be used to practice the claimed invention as commensurate in scope with the claims.

In view of the breadth of the claims (any explant and any plant) and the lack of guidance in the specification, undue experimentation would be required to enable the invention as commensurate in scope with the claims. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Remarks

7. No Claim is allowed.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Georgia L. Helmer whose telephone number is 703-308-7023. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on 703-306-3218. The fax phone numbers for

Application/Control Number: 09/386,605

Page 6

Art Unit: 1638

the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Georgia L. Helmer PhD
Patent Examiner
Art Unit 1638
November 27, 2002


11/27/02
PHUONG T. BUI
PRIMARY EXAMINER

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Christopher G. Taylor and Yong Huang

Application No.: 09/386,605

Group No.: 1638

Filed: 08/31/1999

Examiner: G.L. Helmer

For: Novel Transgene Assay Using Stable *Agrobacterium rhizogenes* Transformation

Confirmation No.: 1594

Mail Stop 16
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR REFUND

Dear Sir:

Applicants request that the Commissioner for Patents refund an amount of \$320.00 which represents the

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. section 1.8(a))

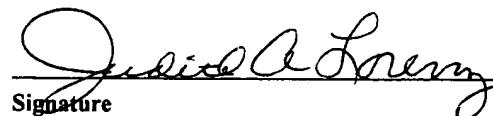
I hereby certify that, on the date shown below, this correspondence is being:

MAILING

X deposited with the United States Postal Service
with sufficient postage as first class mail in an
envelope addressed to Mail Stop 16,
Commissioner for Patents, P.O. Box 1450,
Alexandria, VA 22313-1450.

FACSIMILE

transmitted by facsimile to the Patent and
Trademark Office.


Signature

Date: May 12, 2003

Judith A. Lorenz
(type or print name of person certifying)

Practitioner's Docket No. 38-21(15757)

PATENT

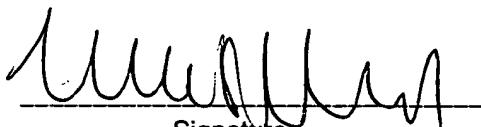
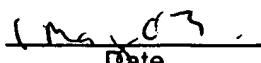
2002. An interview with the Examiner on November 25, 2002 resulted in the August 27, 2002 action being vacated and a supplemental action being issued. Please refund the amount by crediting Deposit Account 13-4125.

Respectfully submitted



Thomas P. McBride
Reg. No. 32,706
Monsanto Company
800 North Lindbergh Boulevard
St. Louis, MO 63167
636-737-7685
636-737-6047

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES		Docket Number (Optional) 38-21(15757)						
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Assistant P.O. Box 1450 Commissioner for Patents, Washington D.C. 20231-1450" on <u>May 2, 2003</u> VA 22313-1450</p> <p>Signature <u>Judith A. Lorenz</u></p> <p>Typed or printed name <u>Judith A. Lorenz</u></p>								
<p>In re Application of Taylor et al.</p> <table border="1"> <tr> <td>Application Number 09/386,605</td> <td>Filed 08/31/1999</td> </tr> <tr> <td colspan="2">For Novel Transgene Assay Using Stable Agrobacterium Rhizogenes Transformation</td> </tr> <tr> <td>Group Art Unit 1638</td> <td>Examiner Georgia L. Helmer</td> </tr> </table>			Application Number 09/386,605	Filed 08/31/1999	For Novel Transgene Assay Using Stable Agrobacterium Rhizogenes Transformation		Group Art Unit 1638	Examiner Georgia L. Helmer
Application Number 09/386,605	Filed 08/31/1999							
For Novel Transgene Assay Using Stable Agrobacterium Rhizogenes Transformation								
Group Art Unit 1638	Examiner Georgia L. Helmer							
<p>Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the examiner.</p>								
<p>The fee for this Notice of Appeal is (37 CFR 1.17(b)) \$ <u>320.00</u>.</p>								
<p><input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: \$ _____.</p> <p><input type="checkbox"/> A check in the amount of the fee is enclosed.</p> <p><input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.</p> <p><input type="checkbox"/> The Commissioner has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.</p> <p><input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. <u>13-4125</u>. I have enclosed a duplicate copy of this sheet.</p> <p><input checked="" type="checkbox"/> A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.</p>								
<p>WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.</p>								
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record.</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34(a). Registration number if acting under 37 CFR 1.34(a). _____.</p>								
<p> Signature</p> <p>Thomas P. McBride Typed or printed name</p> <p> Date</p>								
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>								
<p><input checked="" type="checkbox"/> *Total of <u>one</u> forms are submitted.</p>								

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PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)

Docket Number (Optional)
38-21(15757)

In re Application of Christopher G Taylor and Yong Huang	
Application Number 09/386,605	Filed August 31, 1999
For Novel Transgene Assay Using Stable Agrobacterium Rhizogenes Transformation	
Group Art Unit 1635	Examiner Andrew Wang

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a response in the above identified application.

The requested extension and appropriate non-small-entity fee are as follows (check time period desired):

<input type="checkbox"/>	One month (37 CFR 1.17(a)(1))	\$ _____
<input checked="" type="checkbox"/>	Two months (37 CFR 1.17(a)(2))	\$ 410.00
<input type="checkbox"/>	Three months (37 CFR 1.17(a)(3))	\$ _____
<input type="checkbox"/>	Four months (37 CFR 1.17(a)(4))	\$ _____
<input type="checkbox"/>	Five months (37 CFR 1.17 (a)(5))	\$ _____
<input type="checkbox"/>	Applicant is a small entity under 37 CFR 1.9 and 1.27, therefore the fee amount shown above is reduced by one-half, and the resuming fee is: \$ _____	

A small entity statement under 37 CFR 1.27:

<input type="checkbox"/>	is enclosed.
<input type="checkbox"/>	has already been filed in this application.
<input type="checkbox"/>	A check in the amount of the fee is enclosed.
<input type="checkbox"/>	The Commissioner has already been authorized to charge fees in this application to a Deposit Account.
<input checked="" type="checkbox"/>	The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number <u>13-4125</u> . I have enclosed a duplicate copy of this sheet.

I am the assignee of record of the entire interest.

applicant.

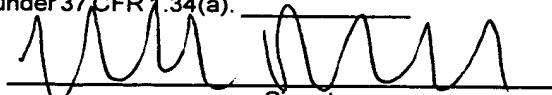
attorney or agent of record.

attorney or agent under 37 CFR 1.34(a).

Registration number if acting under 37 CFR 1.34(a). _____

May 03

Date



Signature

Thomas P. McBride, Reg. No. 32,706

Typed or printed name

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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/386,605	08/31/1999	CHRISTOPHER G. TAYLOR	38-21-(15757	1594

27161 7590 09/23/2003

MONSANTO COMPANY
800 N. LINDBERGH BLVD.
ATTENTION: G.P. WUELLNER, IP PARALEGAL, (E2NA)
ST. LOUIS, MO 63167

[REDACTED] EXAMINER

HELMER, GEORGIA L

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

1638

19

DATE MAILED: 09/23/2003

(Attn. of abandonment,

Please find below and/or attached an Office communication concerning this application or proceeding.

(TPM)
=
POSITIVE
09/23/03

SEP 26 2003

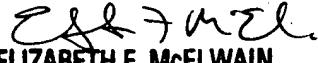
Notice of Abandonment	Application No.	Applicant(s)
	09/386,605	TAYLOR ET AL.
	Examiner Georgia L. Helmer	Art Unit 1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. Applicant's failure to timely file a proper reply to the Office letter mailed on _____.
 (a) A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 (b) A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
 (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 (c) A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 (d) No reply has been received.
2. Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 (a) The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 (b) The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
 The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 (c) The issue fee and publication fee, if applicable, has not been received.
3. Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 (a) Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 (b) No corrected drawings have been received.
4. The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. The reason(s) below:

The Notice of Appeal was filed 3 December 2002, nine and a half months ago from today, 17 September 2003. The Notice of Appeal time period is 6 months from the date of filing the NOA. Accordingly this case is abandoned.

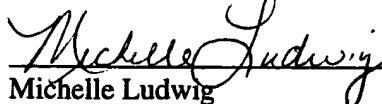

ELIZABETH F. McELWAIN
PRIMARY EXAMINER
GROUP 1600

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE UNDER 37 C.F.R. §1.10

I hereby certify that the documents enclosed herein are being deposited with the United States Postal Service on this 2nd day of December, 2003 in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number EV113668533US addressed to: MAIL STOP RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.


Michelle Ludwig

EV113668533US

In re application of: Taylor et al.

)
) Examiner: Georgia L. Helmer
Serial No.: 09/386,605
)
) Group Art Unit: 1638
Filed: August 31, 1999
)
For: Novel Transgene Assay Using Stable
Agrobacterium Rhizogenes Transformation)
Conf. No. 1594
)

MAIL STOP RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

TRANSMITTAL LETTER

Transmitted herewith are the following documents in the above-identified application.

- X Request for Continued Examination (RCE) Transmittal
- X Petition for Extension of Time Under 37 CFR 1.136(a)
- X Amendment B and Remarks
- X Fee Transmittal for Year 2004
- X If an extension or an additional extension of time is required, but is not enclosed, please consider this a conditional petition therefor and charge Deposit Account 13-4125 accordingly.
- X Please debit \$2,780.00 from Deposit Account 13-4125 for the fee required with this filing.
- X Please charge any deficiencies or credit any overpayment to Deposit Account 13-4125. A duplicate copy of this sheet is attached.

Respectfully submitted,



Thomas P. McBride

Reg. No. 32,706

800 North Lindbergh Boulevard, Mail Zone E2NA

St. Louis, Missouri 63167

(314) 694-5802 (telephone)

(314) 694-5311 (facsimile)

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**Request
for
Continued Examination (RCE)
Transmittal**

**Address to:
Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

<i>Application Number</i>	09/386,605
<i>Filing Date</i>	August 31, 1999
<i>First Named Inventor</i>	Christopher G. Taylor
<i>Art Unit</i>	1638
<i>Examiner Name</i>	Georgia L. Helmer
<i>Attorney Docket Number</i>	38-21(15757)

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.

Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print/Type)	Thomas R. McBride	Registration No. (Attorney/Agent)	32,706
Signature		Date	2 Dec 07

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service **Express Mail** #EV11366853US addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Name (Print/Type) **Michelle Ludwig**

Signature

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)

Docket Number (Optional)
38-21(15757)

In re Application of Taylor et al.

Application Number 09/386,605

Filed 8/31/1999

For Novel Transgene Assay Using Stable Agrobacterium Rhizogenes Transformation

Group Art Unit 1638

Examiner Georgia L. Helmer

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and appropriate non-small-entity fee are as follows
(check time period desired):

<input type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$ _____
<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$ _____
<input type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$ _____
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$ _____
<input checked="" type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$ 2,010.00

Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee amount shown above is reduced by one-half, and the resulting fee is: \$_____.

A check in the amount of the fee is enclosed.

Payment by credit card. Form PTO-2038 is attached.

The Commissioner has already been authorized to charge fees in this application to a Deposit Account.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 13-4125.

I have enclosed a duplicate copy of this sheet.

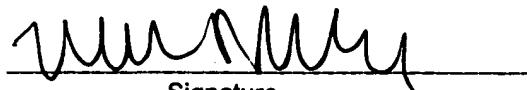
I am the applicant/inventor

<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).
<input checked="" type="checkbox"/> attorney or agent of record.
<input type="checkbox"/> attorney or agent under 37 CFR 1.34(a). Registration number if acting under 37 CFR 1.34(a)_____.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

2 Dec 03

Date



Signature

Thomas P. McBride

Typed or printed name

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

Total of one forms are submitted.

Burden Hour Statement: This form is estimated to take 0.1 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Taylor et al.

Serial number:

09/386,605

Filing Date:

08/31/99

Docket Number

38-21 (15757)

Group Art Unit:

1638

Examiner:

Helmer, G.

Title:

**Novel Transgene Assay Using Stable
Agrobacterium Rhizogenes
Transformation**

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service on this 2nd day of December, 2003 in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number EV113668533US addressed to: MAIL STOP RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.



DATE: 2 December 2003

Michelle Ludwig

Printed Name

AMENDMENT B and REMARKS

MAIL STOP RCE
COMMISSIONER FOR PATENTS
PO Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

In response to the Final Office Action dated 12/3/02, and Applicant's subsequent Notice of Appeal dated May 2, 2003, Applicants hereby file the accompanying Request for Continued Examination and this Amendment B and Remarks responsive to the issues raised in the December 3, 2002 office action. A five-month extension of time has been submitted to render

this amendment timely filed. In the event that any additional extension of time is necessary to render this response timely, the Patent Office is hereby authorized to debit Deposit Account 13-4125 for any such fee required and to consider this a conditional petition therefore.

Claim Amendments

Please enter the following amendments.

1. (currently amended) A method for producing a stably transformed chimeric dicotyledonous plant having transgenic root tissue, the method comprising the steps of:
obtaining an stem or hypocotyl explant from a selected dicotyledonous plant species;
transforming the stem or hypocotyl explant with *Agrobacterium rhizogenes* containing an exogenous nucleic acid sequence capable of being transferred to the explant;
culturing the transformed explant in a root initiating media to produce transformed roots; and
transferring the transformed roots to soil or a hydroponic environment to produce the chimeric dicotyledonous plant having transformed roots and wild type shoots, stems and leaves.
2. (canceled)
3. (previously presented) The method of claim 1 wherein the explant is a hypocotyl having a cut end below the cotyledon.
4. (original) The method of claim 3 wherein the cut end of the hypocotyl is contacted with the *Agrobacterium rhizogenes*.
5. (original) The method of claim 4 wherein the *Agrobacterium rhizogenes* is strain K599.
6. (canceled)
7. (currently amended) The method of claim 61 wherein the dicotyledonous plant is soybean, potato, or tomato.
8. (previously presented) The method of claim 4 wherein transformed roots are initiated in the hypocotyl by placing the end of the hypocotyl contacted with the *Agrobacterium rhizogenes* in a media containing $\frac{1}{4}$ strength Murashige and Skoog media.
9. (original) The method of claim 8 wherein the media further comprises a selectable agent.
10. (original) The method of claim 9 wherein the selectable agent is kanamycin.
11. (previously presented) The method of claim 10 wherein the concentration of kanamycin in the media is no more than 50 mg/L.
12. (withdrawn) A method for testing a genetic element for functionality in a plant, comprising the steps of:
obtaining an explant;
inoculating the explant with *Agrobacterium rhizogenes* containing an exogenous genetic element capable of being transferred to the explant;
culturing the inoculated explant in a manner permitting transgenic root development;

producing a stable chimeric plant with transgenic root tissue;

analyzing the transgenic root tissue for the exogenous genetic element.

13. (withdrawn) The method of claim 12 wherein the exogenous genetic element is a gene that confers resistance to plant pathogens.

14. (withdrawn) The method of claim 12 wherein the exogenous genetic element is a gene that confers an agronomic trait to the plant.

15. (withdrawn) The method of claim 12 wherein the exogenous genetic element is a gene that is involved in the enzymatic or metabolic activity of the plant.

16. (withdrawn) The method of claim 12 wherein the exogenous genetic element is a promoter sequence.

17. (withdrawn) The method of claim 12 wherein the explant is selected from the group consisting of stem, hypocotyl or root tissue.

18. (withdrawn) The method of claim 12 wherein the explant is a hypocotyl providing a cut end below the cotyledon.

19. (withdrawn) The method of claim 18 wherein the cut end of the hypocotyl is contacted with the *Agrobacterium rhizogenes*.

20. (withdrawn) The method of claim 19 wherein the *Agrobacterium rhizogenes* is strain K599.

21. (withdrawn) The method of claim 12 wherein the explant is obtained from a dicotyledonous plant.

22. (withdrawn) The method of claim 21 wherein the plant is soybean, potato, or tomato.

23. (withdrawn) The method of claim 19 wherein transgenic root development is initiated in the inoculated hypocotyl by placing the inoculated hypocotyl region in a media containing $\frac{1}{4}$ MS.

24. (withdrawn) The method of claim 23 wherein the media further comprises a selectable agent.

25. (withdrawn) The method of claim 24 wherein the selectable agent is kanamycin.

26. (withdrawn) The method of claim 25 wherein the concentration of kanamycin in the media is no more than about 50 mg/L.

REMARKS

Reconsideration of the application in view of the amended claims and the following remarks is respectfully requested. Claims 1, 3-5 and 7-11 remain pending. Claims 2 and 6 have been canceled. Claims 12-26 remain withdrawn.

Rejections under 35 U.S.C. § 112, first paragraph

The Examiner had rejected claims 1-11 under 35 U.S.C. § 112, first paragraph on the basis that the specification, while being enabling for soybean hypocotyls and potato branches, does not reasonably provide enablement for any explant of any plant. Applicants respectfully disagree with the position of the Patent Office, but to obtain and expedite the issuance of allowable claims, the claims have been amended to address the rejection raised by the Patent Office. Applicants have introduced into the claims that the explant is a "stem or hypocotyl" and that the resulting chimeric plant is from a "dicotyledonous" plant species. It is believed that this addresses the 35 U.S.C. § 112, first paragraph rejections and that claims 1-3-5 and 7-11 are now in condition for allowance and passage to publication.

In view of the foregoing, it is submitted that the newly amended claims are in condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested. If the examiner believes that a phone conference with Applicants' representative would advance the application to allowance, she is invited to telephone the undersigned at the number below.

Respectfully submitted,



Thomas P. McBride
Reg. No. 32,706
800 North Lindbergh Boulevard
Mail Zone E2NA
St. Louis, Missouri 63167
(314) 694-5802 (telephone)
(314) 694-5311 (facsimile)

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FEE TRANSMITTAL

for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 2,780.00)

Complete if Known

Application Number	09/386,605
Filing Date	8/31/1999
First Named Inventor	Christopher G. Taylor
Examiner Name	Georgia L. Helmer
Art Unit	1638
Attorney Docket No.	38-21(15757)

METHOD OF PAYMENT (check all that apply)

 Check Credit card Money Order Other None
 Deposit Account:

Deposit Account Number	13-4125
Deposit Account Name	Monsanto Company

The Director is authorized to: (check all that apply)

 Charge fee(s) indicated below Credit any overpayments
 Charge any additional fee(s) or any underpayment of fee(s)
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity	Fee Code (\$)	Fee	Small Entity	Fee Code (\$)	Fee	Fee Description	Fee Paid
1001	770	2001	385			Utility filing fee	
1002	340	2002	170			Design filing fee	
1003	530	2003	265			Plant filing fee	
1004	770	2004	385			Reissue filing fee	
1005	160	2005	80			Provisional filing fee	
SUBTOTAL (1) (\$)				-0-			

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	24	-20** =	0	x	18	= -0-	Fee Paid
Independent Claims	2	- 3** =	0	x	86.	= -0-	
Multiple Dependent							

Large Entity	Small Entity	Fee Description
Fee Code (\$)	Fee Code (\$)	
1202	18	2202 9 Claims in excess of 20
1201	86	2201 43 Independent claims in excess of 3
1203	290	2203 145 Multiple dependent claim, if not paid
1204	86	2204 43 ** Reissue independent claims over original patent
1205	18	2205 9 ** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2) (\$)		-0-

**or number previously paid, if greater; For Reissues, see above

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee (\$)	Fee Code (\$)	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	2,010.00
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1808	180	1808	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	770.00
1802	900	1802	900	Request for expedited examination of a design application	

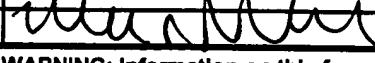
Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 2,780.00)

SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	Thomas P. McBride	Registration No. (Attorney/Agent)	32,706	Telephone	314-694-5802
Signature					
Date	2 Dec 03				

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